

- (b) from ports and points in New Zealand, on the one hand, to ports and points in the United States (including Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands), on the other hand; the “New Zealand trade”, and
- (c) The Australian trade and the New Zealand trade are hereinafter referred to collectively as “the trades”.

5. OVERVIEW OF AGREEMENT AUTHORITY

5.1 To the extent permitted by the applicable laws, the parties or any two or more of them are authorised, but not required, to meet, to exchange information and data, to consider and discuss and to reach non-binding consensus upon the following matters:

- (a) the rates, charges (including any demurrage, detention and other charges relating to the receiving, handling, storage and delivery of cargo), classifications, terms and conditions applicable to the transportation of cargo in the trades, service contract rates, charges, terms and conditions, and any rules and regulations applicable to those rates, charges, classifications, terms and conditions;
- (b) cargo movements, seasonability and other fluctuations of traffic flows and related data bearing on the level and frequency of liner services, including, without limitation, services offered by non-parties, required by shippers in Australia, New Zealand and/or the United States;
- (c) the formulation of any lawful agreement permitting the rationalization of service, equipment or capacity in all or any part of the trades, by joint service, space charter, or otherwise; provided that no such agreement may become effective until it is first reduced to writing and all governmental conditions required to be fulfilled prior to its effectiveness shall have been fulfilled;
- (d) practices in connection with the receipt, carriage, handling and delivery of cargo, including cargo classifications and cargo space accommodations, the operation by the parties and non-parties of vessels, containers, equipment and facilities in the trades, and the centralisation of cargo at outports and transshipment of same by feeder vessel, rail or motor carrier. In respect to the Australian trade, the parties will abide by the provisions of the ~~Australian Trade Practices Act 1974 (Cth)~~ Competition and Consumer Act 2010 in reaching any such consensus;
- (e) Liability, bill of lading conditions, positioning of equipment, interchange with connecting carriers, terminal and shoreside loading operations, wharfage, free time and demurrage, receipt, handling, storage and delivery of cargo (to the extent permitted under Part X of the ~~Australia Trade Practices Act~~ Australian Competition and Consumer Act 2010), consolidation,

6. OFFICIALS OF AGREEMENT AND DELEGATION OF AUTHORITY

- 6.1 The parties may select an Agreement Chairman who shall be an official of one of the parties, who (or whose nominated representative) shall have the following functions:
- (a) to preside at meetings of the membership;
 - (b) to file minutes and other documents as may be required by the rules of the Federal Maritime Commission;
 - (c) in respect to the Australian Trade, to apply on behalf of the parties under the ~~Australian Trade Practices Act 1974 (Cth)~~ Australian Competition and Consumer Act 2010 for the provisional and final registration of the Agreement and of any amendment or associated agreement and to give notice of any change in negotiable shipping arrangements or of any other affecting event, as may be required under the ~~Australian Trade Practices Act 1974 (Cth)~~ Australian Competition and Consumer Act 2010.
- 6.2 The parties may form or subsequently disband sub-Committees or working groups and appoint a Chairman of such sub-Committees or working groups as may be considered necessary from time to time.
- 6.3 The parties shall jointly nominate a representative authorised to sign on behalf of each party and file this Agreement as required by the applicable laws, which representative may delegate this authority to counsel.
- 6.4 The parties may also employ administrative personnel, attorneys and other persons to perform services in connection with this Agreement, and otherwise provide for administrative and housekeeping matters.

7. MEMBERSHIP, WITHDRAWAL, RE-ADMISSION AND EXPULSION

- 7.1 Any ocean common carrier providing services, either directly or via transshipment, in one or both of the trades may become a party to this Agreement by signing the Agreement or a counterpart copy thereof, and upon filing, as required by any applicable law, a modification hereof adding such carrier as a new party to this Agreement.
- 7.2 A party may only be expelled from this Agreement for abandonment of service, or for breach of any obligation of that party under this Agreement, and only in accordance with the following procedure:

13.4 The following rules apply to the arbitration:

- (a) Except by agreement of the parties to the arbitration there will be no prehearing discovery.
- (b) The arbitrator shall decide the matter only on the basis of evidence submitted to him, which evidence shall be supplied to the other parties to the arbitration, who shall be given the opportunity to submit evidence in rebuttal, explanation or mitigation, and to cross-examine any witness.
- (c) The cost of the arbitration shall be borne equally by the parties to the dispute, and each party shall be liable to pay its own expenses of the arbitration.

13.5 Article 13.1 does not apply:

- (a) if the parties to the dispute or difference agree in writing that it is to be resolved by some other means, and
- (b) (where the agreed means involve arbitration or other proceedings outside Australia) if the Australian Minister administering the ~~Trade Practices Act 1974 (Cth)~~ Australian Competition and Consumer Act 2010 also agrees in writing.

13.6 This Article excludes any right of appeal that a party would otherwise have under Part V of the Commercial Arbitration Act 1984 (NSW), to the full extent permitted by that Act.

13.7 This Article does not affect the jurisdiction of the Federal Maritime Commission under the U.S. Shipping Act of 1984.

14. SERVICE CONTRACTS

14.1 The parties may together negotiate and enter into joint service contracts (hereinafter jointly referred to as "joint service contracts"), with individual shippers, shippers' associations, shippers' boards or groups authorised by law and/or other groups of shippers (jointly referred to as "Shipper"). Prior to the execution of any joint service contract by the parties, any party may elect not to participate, or to limit its participation therein, in which event the service contract shall so specify. Notwithstanding any other provision of this Agreement, no party may exercise independent action to deviate, in any respect whatsoever, from the terms and conditions of any such joint service contract which has been entered into by the parties. Each joint service contract entered into by the Agreement shall be filed in accordance with such rules and regulations as the U.S. Federal Maritime Commission may from time to time prescribe and registered, if necessary, under the ~~Australian Trade Practices Act 1974 (Cth)~~ Australian Competition and Consumer Act 2010.

- 14.2 Any party, either individually or jointly with any other party or parties, may negotiate, offer and/or enter into a service contract for the transportation of cargo in the trades (any such contract entered into by a single party or jointly by multiple parties is hereinafter referred to as an "individual service contract"). The parties are authorised, but not required, to discuss and agree upon any and all terms of their respective individual service contracts and to exchange and discuss any and all information and data concerning their respective individual service contracts. The parties are authorised to discuss, agree upon, adopt, revise and implement voluntary guidelines relating to the terms and procedures of individual service contracts. Any such voluntary guidelines adopted by the parties shall explicitly state that the parties have the right not to follow the guidelines and shall be submitted confidentially to the Federal Maritime Commission.

15. MISCELLANEOUS

In this Agreement "applicable law" means the U.S. Shipping Act 1984 (as amended), the ~~Australian Trade Practices Act 1974 (Cth)~~ Australian Competition and Consumer Act 2010 (as amended) and, for New Zealand, the Commerce Act 1986 (Section 44) and the Shipping Act 1987 (as amended). This Agreement shall be binding upon and enure to the benefit of only the parties hereto.

APPENDIX B

MINIMUM LEVEL OF SERVICE TO BE PROVIDED BY THE AUSTRALIA & NEW ZEALAND - UNITED STATES DISCUSSION AGREEMENT

1. Extent of Undertaking to Provide Minimum Level of Service

With a view to providing adequate, economic and efficient shipping services, Member Lines agree, subject to the conditions set out in this Appendix, to provide the minimum level of service specified in Paragraph 3.

2. Basis of Providing Minimum Level of Service

The Minimum Service Level in this Appendix is subject to the Conditions of the Member Lines' individual Tariffs (excluding the schedule of freight rates and charges) and Force Majeure (including strikes, actual conflict or civil disturbance) wherever occurring.

The minimum level of service specified in Paragraph 3 is established having regard to expected trading and operational conditions in the 12 months from 1 April 2012. In the event that any of these conditions change to a degree which could prevent the achievement of the specified minimum level of service, the Member Lines have the right, with prior notice to the relevant Designated Shipper Body, to provide proportionately a lower level of service for a period not exceeding 90 days.

If the present Appendix is not amended in respect of the minimum service level within the 90 day period, Member Lines will take whatever action is necessary to provide the minimum level of service specified in Paragraph 3.

3. Statement of Minimum Service Levels

The minimum service level for the purpose of this Agreement on the basis in Paragraph 2 is as follows:

a. Minimum Capacity and Service

The Member Lines collectively undertake to maintain sufficient tonnage in the trade to provide:

West Coast USA	36,236 36,173 dry TEUs, 6,929 7,107 refrigerated plugs and 62 sailings
East Coast USA	46,604 23,878 TEUs, 6,436 10,858 refrigerated plugs and 62 sailings

per annum on a regular basis together with sufficient containers in good working order and condition.

- b. Loading Ports (by direct service or indirect service at base port rates at no extra cost to shippers/exporters).

Melbourne
Sydney

- c. Discharge Ports (by direct service or indirect service at base port rates at no extra cost to shippers/exporters).

~~Long Beach~~ Los Angeles
Philadelphia
Oakland
Savannah
~~Seattle~~ Tacoma

- d. Other Ports

Ports other than those stipulated in 3b and 3c. above may be served directly or indirectly by the Lines. Additional freight or on-carrying charges may apply.

- e. At the time of negotiating this Appendix B - Minimum Level of Service document the overall range of ports serviced, whether direct or indirect, contained in the current terms and conditions of the Member Lines individual Tariffs form part of this Agreement.

4. Amendment

This Appendix is subject to amendment by Member Lines after negotiation, if required, with the relevant Designated Shipper Body, currently the Australian Peak Shippers Association.

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